



Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-SC-21-0099; SC22-932-1 PR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Olive Committee (Committee) to decrease the assessment rate established for the 2022 fiscal year and subsequent fiscal years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk electronically by Email: MarketingOrderComment@usda.gov or via the internet at: <https://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Gary Olson, Regional Director, West Region Marketing Field Office, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 538-1672, or Email: Kathie.Notoro@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of producers and handlers of olives operating within the area of production, and one public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. Agricultural Marketing Service (AMS) has determined that this proposed rule is unlikely to have

substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. Under the Order now in effect, California olive handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable olives beginning on January 1, 2022, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

This proposed rule would decrease the assessment rate from \$30.00 per ton of assessed olives, the rate that was established for the 2021 and subsequent fiscal years, to \$16.00 per ton of assessed olives for the 2022 and subsequent fiscal years. The proposed lower rate is the result of the significantly higher crop size in 2021 (fruit that is marketed over the course of the 2022 fiscal year) and the need to reduce the Committee's financial reserve.

The Committee met on November 10, 2021, and unanimously recommended 2022 expenditures of \$1,245,085 and an assessment rate of \$16.00 per ton of assessed olives to fund necessary administrative expenses and to maintain a financial reserve within the limits prescribed under the Order. In comparison, last year's budgeted expenditures were \$1,151,831. The proposed assessment rate of \$16.00 is \$14.00 lower than the rate currently in effect. Producer receipts show a yield of 43,336 tons of assessable olives from the 2021 crop year, which is more than double the quantity of olives harvested in 2020.

Olives harvested in 2021 will be marketed over the course of the 2022 fiscal year, which begins on January 1, 2022. The 43,336 tons of assessable olives from the 2021 crop would generate \$693,376 in assessment revenue at the proposed assessment rate. The balance of funds needed to cover budgeted expenditures would come from interest income, Federal grants, and the Committee's financial reserve. The 2022 fiscal year assessment rate decrease would be appropriate to ensure the Committee has sufficient revenue to fund the recommended 2022 fiscal year budgeted expenditures while ensuring the funds in the financial reserve would be kept within the maximum permitted by § 932.40.

The Order has a fiscal year and a crop year that are independent of each other. The crop year is a 12-month period that begins on August 1 of each year and ends on July 31 of the following year. The fiscal year is the 12-month period that begins on January 1

and ends on December 31 of each year. Olives are an alternate-bearing crop, with a small crop followed by a large crop. The Committee used the actual 2021 crop year receipts, in part, to determine the proposed assessment rate for the 2022 fiscal year.

The major expenditures recommended by the Committee for the 2022 fiscal year includes \$538,700 for program administration, \$284,000 for marketing activities, \$379,485 for research, and \$42,900 for inspection. Budgeted expenses for these items during the 2021 fiscal year were \$531,300, \$238,000, \$334,532, and \$48,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2021 crop year, and the amount in the Committee's financial reserve. Income derived from handler assessments and other revenue sources is expected to be adequate to cover budgeted expenses. The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of olives in the production area and 2 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

Because of the large year-to-year variation in California olive production it is helpful to use two-year averages of seasonal average grower price when undertaking calculations relating to average grower revenue. The National Agricultural Statistics Service (NASS) reported season average grower prices of olives utilized for canning for 2019 and 2020 of \$1,040 and \$1,060 per ton, respectively. The two-year average price is \$1,050.

The appropriate quantities to consider are the annual assessable olive quantities, which were 20,020 tons in 2020 and 43,336 tons in 2021. The two-year average quantity was 31,678 tons. Multiplying 31,678 tons by the two-year average grower price of \$1,050 yields a two-year average crop value of \$33.262 million. Dividing the crop value by the number of olive producers (800) yields calculated annual average producer

revenue of \$41,577, much less than SBA's size standard of \$1,000,000. Thus, the majority of olive producers may be classified as small entities.

Dividing the \$33.262 million crop value by two equals \$16.631 million, which is the annual average producer crop value processed by each of the two handlers over the two-year period. Dividing the \$30 million annual sales SBA size threshold for a large handler by the \$16.631 crop value per handler yields an estimate of an 80 percent manufacturing margin for the two canners, on average, to be considered large handlers. A key question is whether 80 percent is a reasonable estimate of a manufacturing margin for the olive canning process.

A review of economic literature on canned food manufacturing margins found no recent published estimates. A series of USDA, Economic Research Service reports on cost components of farm to retail price spreads, published in the late 1970s and early 1980s, found that margins above crop value for a canned vegetable product was in the range of 76 to 85 percent. Although the studies are not recent, a key observation is that canning technology has not changed significantly in that time period. Therefore, with the 80 percent margin estimate for the two olive handlers, the data indicates that they are right on the threshold of being large handlers (\$30 million in annual sales), using two-year average data, and assuming that the two handlers are about the same size. In a large crop year, one or both handlers would be considered large handlers, depending on the proportion of the crop that each of the handlers processed.

This proposal would decrease the assessment rate collected from handlers for the 2022 and subsequent fiscal years from \$30.00 to \$16.00 per ton of assessable olives. The Committee unanimously recommended 2022 expenditures of \$1,245,085 and an assessment rate of \$16.00 per ton. The recommended assessment rate of \$16.00 is \$14.00 lower than the 2021 rate. The quantity of assessable olives harvested in the 2021 crop year is 43,336 tons as compared to 20,020 tons in 2020. Olives are an alternate-bearing

crop, with a small crop followed by a large crop. Income derived from the \$16.00 per ton assessment rate, along with interest income, Federal grants, and funds from the authorized reserve, should be adequate to meet this fiscal year's budgeted expenditures.

The Committee's financial reserve is projected to be \$1,990,000. The major expenditures recommended by the Committee for the 2022 fiscal year include \$538,700 for program administration, \$284,000 for marketing activities, \$379,485 for research, and \$42,900 for inspection. Budgeted expenses for these items during the 2021 fiscal year were \$531,300, \$238,000, \$334,531, and \$48,000, respectively. The Committee deliberated on many of the expenses, weighed the relative value of various programs or projects, and decreased their expenses for marketing and research activities while increasing program administration. Overall, the 2022 budget of \$1,245,085 is \$93,254 more than the \$1,151,831 budgeted for the 2021 fiscal year.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources including the Committee's Executive, Marketing, Inspection, and Research Subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry and the increased olive production. The assessment rate of \$16.00 per ton of assessable olives was derived by considering anticipated expenses, the high volume of assessable olives, the current balance in the monetary reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2020 crop year was \$1,060 per ton and the quantity of assessable olives harvested in the 2021 crop year is 43,336 tons, which makes total producer revenue \$45,936,160 (\$1,060 multiplied by 43,336 tons). Therefore, utilizing the assessment rate of \$16.00 per ton, the assessment revenue for the 2022 fiscal year as a percentage of total producer revenue would be approximately 1.5 percent (\$16.00 multiplied by 43,336 tons divided by \$45,936,160 multiplied by 100).

This proposed action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers and may also reduce the burden on producers.

The Committee's meetings are widely publicized throughout the production area. The olive industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the November 10, 2021 meeting was public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

A 60-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this proposed rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 932 as follows:

PART 932-OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2022, an assessment rate of \$16.00 per ton is established for California olives.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

